

No. 84-786 (2)

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

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STATE OF MAINE,  
Petitioner

V.

PERLEY MOULTON, JR.,  
Respondent

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ON WRIT OF CERTIORARI TO THE  
SUPREME JUDICIAL COURT OF THE  
STATE OF MAINE

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SUPPLEMENTAL BRIEF FOR PETITIONER

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REASON FOR GRANTING THE WRIT

THE MAINE SUPREME JUDICIAL  
COURT HAS DECIDED AN  
IMPORTANT QUESTION OF  
SIXTH AMENDMENT LAW  
REQUIRING CLARIFICATION BY  
THIS COURT.

Pursuant to U.S. Sup. Ct. Rule 22.6,  
Petitioner State of Maine files this  
supplemental brief calling this Court's  
attention to the new case of Mealer v.  
Jones, 741 F.2d 1451 (2d Cir. Decided  
August 8, 1984).

In its petition for a writ of  
certiorari, the State of Maine argued that  
by finding a Sixth Amendment violation in  
State of Maine v. Perley Moulton, Jr., 481  
A.2d 155 (Me. 1984), the Maine Supreme  
Judicial Court misunderstood the majority  
opinion in United States v. Henry, 447

U.S. 264 (1980), in precisely the way that the Henry concurring and dissenting opinions feared. The State also noted that the need for clarification in this area of Sixth Amendment law is illustrated by the direct conflict between the Maine Court's decision in Moulton and the First Circuit's decision in United States v. DeWolf, 696 F.2d 1 (1st Cir. 1982) (no Massiah violation where the government obtained the defendant's post-indictment incriminatory statements in the good faith investigation of a separate unindicted crime) (citing Grieco v. Meachum, 533 F.2d 713, 717-18 (1st Cir.), cert. denied, 429 U.S. 858 (1976)). Pet. at 22 n.7. Also illustrative of the need for clarification is the Second Circuit's express rejection in Mealer v. Jones, 741 F.2d 1451 (2d Cir.

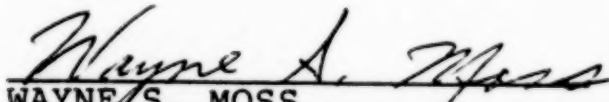
Decided August 8, 1984), of the First Circuit's position in DeWolf.

Significantly, in finding a Sixth Amendment violation in Mealer, the Second Circuit brought itself into direct conflict with the contrary holding of the New York Court of Appeals in the same case, People v. Mealer, 57 N.Y.2d 214, 441 N.E.2d 1080, 455 N.Y.S.2d 562 (1982) (no Sixth Amendment violation because the defendant's post-indictment incriminatory statements were made in response to legitimate, good faith inquiry concerning unindicted criminal activity), cert. denied, 460 U.S. 1024 (1983).

It is therefore respectfully submitted that the State of Maine's petition for a writ of certiorari should be granted because the Maine Supreme Judicial Court

has decided an important question of Sixth Amendment law requiring clarification by this Court. This reason for granting the writ is in addition to the reason stated in the petition itself - viz., that the Maine Supreme Judicial Court has decided an important question of Sixth Amendment law in a way that conflicts with this Court's decisions in Massiah v. United States, 377 U.S. 201 (1964), Brewer v. Williams, 430 U.S. 387 (1977), and United States v. Henry, 447 U.S. 264 (1980).

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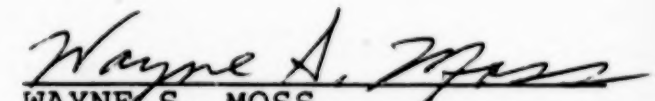


CERTIFICATE OF SERVICE

I, Wayne S. Moss, Assistant Attorney General for the State of Maine and Counsel of Record for Petitioner, hereby certify that pursuant to U.S. Sup. Ct. Rule 28.3 I have caused three (3) copies of the foregoing "Supplemental Brief for Petitioner" to be served on the only other party to this proceeding by depositing said copies in the United States Mail, postage prepaid, addressed to Respondent's Counsel of Record, Anthony W. Beardsley, Esquire, as follows:

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Dated at Augusta, Maine, this 15th day of January, 1985.

  
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